

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LEO MILLET)	
Claimant)	
VS.)	
)	Docket No. 244,800
HERNDON ROOFING)	
Respondent)	
AND)	
)	
COMMERCIAL UNION INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the preliminary hearing Order dated September 10, 1999, entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

This is a claim for injuries to both feet. The Judge found that claimant's testimony was not credible and denied the request for benefits.

The claimant contends the Judge erred by finding that he failed to prove that he injured his feet while working for the respondent. That is the only issue on this appeal.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. Mr. Millet contends he injured his feet while working for Herndon Roofing. The company contends that Mr. Millet failed to prove that allegation.
2. The outcome of this case hinges upon Mr. Millet's credibility. He testified that in approximately April 1999 he began experiencing pain in his feet while working on a steep roof for Herndon Roofing. Mr. Millet believes the job was located at Friends University. He testified that he told his boss, Greg Herndon, many times that his feet were killing him. Further, Mr. Millet testified that co-workers knew about his feet hurting as he began limping. Conversely, Mr. Herndon testified and controverted Mr. Millet's testimony.

According to Mr. Herndon, Mr. Millet did not tell him about his feet hurting until after he terminated Mr. Millet for failing to come to work. And a co-worker, Todd Tyson, testified that he worked alongside Mr. Millet after the Friends University job and that he did not see Mr. Millet exhibit "any outward signs of physical injury." Further, Mr. Tyson did not know that Mr. Millet was alleging that he was injured until three or four days after Mr. Millet was terminated. Mr. Millet did not present medical evidence that his alleged foot injuries are related to an accident that occurred at work.

3. The Judge had the opportunity to observe both Mr. Millet and Mr. Herndon testify. Mr. Tyson's deposition was then taken and forwarded to the Judge. Considering the three individual's testimonies, the Judge found Mr. Millet to be less than credible. In this instance, the Appeals Board gives some deference to the Judge's impressions of the witnesses' credibility. At this juncture in the proceeding, the Appeals Board likewise is unpersuaded by Mr. Millet's testimony and affirms the Judge's finding that Mr. Millet has failed to prove that he injured his feet while working for Herndon Roofing.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.
2. In workers compensation proceedings, workers have the burden of proof to establish both their rights to compensation and to prove the various conditions upon which their rights depend.¹
3. "Burden of proof" means the burden to persuade the trier of facts by a preponderance of the credible evidence that a party's position on an issue is more probably true than not when considering the whole record.²
4. Because Mr. Millet has failed to prove that he injured his feet at work, the request for benefits must be denied.
5. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Appeals Board affirms the preliminary hearing Order dated September 10, 1999, entered by Judge Barnes.

¹ K.S.A. 1998 Supp. 44-501(a).

² K.S.A. 1998 Supp. 44-508(g).

³ K.S.A. 1998 Supp. 44-534a(a)(2).

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Kendall R. Cunningham, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director